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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/872,976	05/31/2001	Paul Joseph Datta	659/829	3040

7590 09/23/2003

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EXAMINER
REICHLE, KARIN M

ART UNIT	PAPER NUMBER
3761	12

DATE MAILED: 09/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No.	Applicant(s)	
	09/872,976	DATTA ET AL.	
	Examiner	Art Unit	
	Karin M. Reichle	3761	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 02 September 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.

b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.

2. ☐ The proposed amendment(s) will not be entered because:

   (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);

   (b) ☐ they raise the issue of new matter (see Note below);

   (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____.

3. ☒ Applicant's reply has overcome the following rejection(s): the claim objections in paragraph 6.

4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

5. ☐ The a)☐ affidavit, b)☐ exhibit, or c)☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.

6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7. ☒ For purposes of Appeal, the proposed amendment(s) a)☐ will not be entered or b)☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: 1-14.

   Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a)☐ approved or b)☐ disapproved by the Examiner.

9. ☐ Note the attached Information Disclosure Statement(s)(PTO-1449) Paper No(s). _____.

10. ☒ Other: See attached PTO-948 and response to arguments.

Karin M. Reichle
Primary Examiner
Art Unit: 3761

Response to Arguments

1. In regard to Applicant's remarks in Item 1, with respect to the first paragraph, the Examiner transposed the numerals and such should have read 09/215,951. The Examiner apologizes for the typographical mistake. With regard to the second paragraph the reference to Item 8 was not misplaced but used to show that the '951 application did not appear to include the length of the side panel as claimed, i.e. Applicants did not reference such. Note paragraph 8 of the first Office Action. Furthermore, the Examiner never stated that such was considered a claim of priority. (Applicants' reference to item 2 in this argument appears to be erroneous and should be item 8.) The Applicants' response in Item 8 is not disputed because it pointed out support in the specification as well as in the '865 application and '866 application for the claimed specifics, see again paragraph 8 of the first Office Action. With regard to the third paragraph, Examiner did not challenge the claim of priority but rather pointed out that thereby such claim did not appear to be perfected with regard to the '951 application. No requirement or response of any kind was made of Applicants. Applicants' could change the claim of priority to one in which this application is a CIP of the '951 application or not, Applicant could point out where there is support in the '951 application or not. The effective filing date of the application remains 12-18-98 due to perfected claim of priority with respect to the '865 and '866 applications. It is noted that there are no prior art references applied which were issued between the actual filing date and the effective filing date of the instant application. Furthermore, the final was not premature because such issue was raised in the first action in paragraph 8 thereof. With regard to the fourth and fifth paragraphs, it appears that Applicant is making the argument that since the '951 application was incorporated into the '866 and '865 applications and all three are incorporated

into the instant application that the instant application is entitled to claim the benefit from all three. If this is the argument, the Examiner does not disagree that Applicant may claim the benefit of all three but such claim must be perfected as set forth in MPEP 201.11 with regard to each to be entitled to the benefit of each and such entitlement is not based on incorporation by reference but rather on the six conditions set forth in 201.11. Specifically, the Examiner was informing Applicant that one of those conditions, i.e. "The second application must be an application for a patent for an invention which is also disclosed in the first application(the parent...", did not appear to be met by the '951 application.

2. Item 2 is noted. Item 6 is deemed moot.

3. With regard to Item 3 and Item 5, second full paragraph, the understanding of the invention is based on the disclosure of the invention in the specification. Applicants have not described the front fastening panel in Figure 2 as being a different embodiment nor pointed out such at the disclosure on page 4, line 2, which line is a description of the fastener 5. The Examiner's objection to the proposed Figure 2 in paragraph 2 of the FINAL, the objection to the originally filed drawings in paragraph 3 of the FINAL and the objection to the original specification as amended 9-30-02 in paragraph 4, item 2), of the FINAL are based on such description. If Applicant maintains the request to have Figure 2 approved as proposed 9-30-02 the nature of the invention shown in Figure 2 would be much clearer if on page 4, line 2, after "panel", --, see 51 in Figure 2-- could be inserted.

4. With regard to Item 4, the Examiner's authority is 608.01(v) as set forth in the objection, i.e. " Trademarks should be identified by capitalizing each letter of the mark...or otherwise indicating the description of the mark...in the form of a symbol...). Furthermore the

form paragraph used by the Examiner did not tell the Applicants to use capitalization and the trademark symbol together.

5. With regard to item 5, first paragraph, first, the Examiner's objection is not correctly quoted and second the Examiner did set forth the basis for the objection, i.e. both the MPEP sections relied on as well as the claims whose invention are not deemed to commensurately described in the Summary section are set forth. With regard to the third and fourth paragraphs of the arguments, Examiner understands the technology but due to the inconsistent description of the invention is not clear as to what the range of the total capacity of the pad is. It is noted that, on the third line from the bottom of page 4, "250" should be --25--. The Examiner again apologizes for the typing error.

6. With regard to item 8, it is noted that the width referred to in the claims is element 18 or 19 as shown in the instant specification. With regard to the remarks on pages 11-13, such remarks have been considered but are deemed nonpersuasive because the Examiner did point out by referring to various Figures and portions of Swenson what is considered the claimed structure, i.e. the front closure of Swenson, i.e. "fastener 81", "the panel is left handed lined portion". Moreover, Swenson teaches that the elastic, page 3, lines 34-43 as cited in the FINAL, panel has sufficient width, i.e. up to 1200% elongation, to wrap around the wearer who is wearing the unfolded article, see, e.g., Figures 13-14, which width is sufficient factual basis to conclude that such panel can encircle the pant when used. Now see the instant specification at the paragraph bridging pages 29-30, i.e. the pant when used is folded up. With regard to the remarks bridging pages 13-14, contrary to such remarks the apparatus claims 3-9 only require the capability to form a pouch and fasten to itself when used.

7. With regard to Item 9, with regard to Applicants incomprehension it is noted that the rejection is the same rejection as set forth in the first Office action, and even fleshed out a bit. See item 15 of the 9-30-02 response. In any case the Sageser reference incorporates the teachings of Scripps '724 and Buell et al '092 within the cited portions of Sageser, i.e. col. 14, line 29-col. 16, line 3, i.e. only one reference is used in the rejection but 3 are referred to show what is taught by the one, e.g. that the panels stretch at least 50 %. Furthermore, the rejection sets forth on the last three lines, i.e. "With regard... Sageser, what is believed to be inherent. As discussed with regard to Swenson above, the Sageser teaches that the elastic panel has sufficient width to wrap around the wearer who is wearing the unfolded article, which width is sufficient factual basis to conclude that such panel can encircle the pant when used. Now see the instant specification at the paragraph bridging pages 29-30, i.e. the pant when used is folded up. The apparatus claims 10-14 only require the capability to form a pouch and fasten to itself when used.

8. With regard to Item 11, the rejection does not blend inherency and obviousness. The rejection points out two alternative positions. Furthermore, in the second position the Examiner has provided the basis for her combination which combination teaches all the claimed structure. Applicants' reference to "the remaining limitation" is unclear, i.e. what is it? It is noted that this combination of references was also set forth in the first Office Action. Applicants' response thereto in the 9-30-02 response can be found in item 18.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (703) 308-2617. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (703) 308-1957. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

Karin M. Reichle
Primary Examiner
Art Unit 3761

KMR